

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SUSAN E. BREDTHAUER, <i>et al.</i> ,)	4:10CV3132
)	
Plaintiffs,)	
)	
v.)	
)	
GILBERT G. LUNDSTROM, <i>et al.</i> ,)	
)	
Defendants,)	
)	
and)	
)	
RONALD A. LAIRD, <i>et al.</i> ,)	4:10CV3139
)	
Plaintiffs,)	
)	
vs.)	
)	
GILBERT G. LUNDSTROM, <i>et al.</i> ,)	8:10CV326
)	
Defendants,)	
)	
and)	
)	
SUSAN BARKER,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
SAMUEL P. BAIRD, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**Order Approving Distribution of Remaining ESOP Funds to
United Way of the Midlands**

THIS MATTER comes before the Court on the stipulation of the parties (Doc. No. 229) to distribute the \$272.50 remaining in the TierOne Corporation Employee Stock Option Plan (the “ESOP”) to the United Way of the Midlands, a charitable organization

pursuant to the doctrine of *cy pres*. The Court, being duly advised in the premises, finds that the stipulation should be approved. The Court further finds:

1. Plaintiffs filed suit herein alleging, in part, that Defendants breached fiduciary duties to the ESOP pursuant to ERISA §§ 409 and 502(a)(2) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1109 and 1132(a)(2). The court approved a class action settlement in this case and retained jurisdiction over the case for various purposes, including but not limited to the relief requested in the Stipulation.

2. Distribution of the remaining \$272.50 currently held in the ESOP to ESOP participants is cost-prohibitive and impracticable. The anticipated fees and costs to distribute the nominal remaining funds to the numerous ESOP participants would be in excess of \$272.50.

3. Under the circumstances, distribution of the \$272.50 to United Way of the Midlands is appropriate pursuant to the doctrine of *cy pres*.

IT IS THEREFORE ORDERED that the remaining \$272.50 of cash in the TierOne Corporation Employee Stock Option Plan shall be distributed to the United Way of the Midlands, a charitable organization.

Dated: July 28, 2014

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge

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